

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

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|----------------------------------|---|----------------------------------|
| Anthony Moore, |) | |
| |) | |
| Petitioner, |) | |
| |) | ORDER DENYING CERTIFICATE |
| vs. |) | OF APPEALABILITY |
| |) | |
| Timothy Schuetzle, Warden |) | |
| North Dakota State Penitentiary, |) | Case No. 1:08-cv-72 |
| |) | |
| Respondent. |) | |

On October 29, 2008, the Court issued an order denying Moore's 28 U.S.C. § 2254 petition. Moore filed notice of appeal on November 4, 2008. The Eighth Circuit Court of Appeals remanded the matter to this Court for consideration of a certificate of appealability in the first instance.

Accordingly:

1. The Court certifies that an appeal from the denial of this motion may not be taken in forma pauperis because such a appeal would be frivolous and cannot be taken in good faith. Coppedge v. United States, 369 U.S. 438, 444-45 (1962).
2. Upon the entire record before the Court, dismissal of the motion is not debatable, reasonably subject to a different outcome on appeal, or otherwise deserving of further proceedings. Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983). Therefore, a certificate of appealability will not be issued by this Court.
3. If the Petitioner desires further review of his motion he may request issuance of a certificate of appealability by a circuit judge of the Court of Appeals for the Eighth Circuit in accordance with Tiedeman v. Benson, 122 F.3d 518, 520-22 (8th Cir. 1997).

IT IS SO ORDERED.

Dated this 21st day of November, 2008.

/s/ Patrick A. Conmy
Patrick A. Conmy, Senior District Judge
United States District Court